THE AMERICAN JEWISH COMMITTEE

Committee on Peace Problems

War Crimes

A Review of Developments in 1945

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I. Introduction

When *To the Counsellors of Peace* appeared in March, 1945, the United Nations had, through the Moscow Declaration, committed themselves to the punishment of war criminals. But neither the principles on which such punishment was to be based, nor the machinery through which it was to be carried out, existed in more than a rudimentary form.

The United Nations Commission for the Investigation of War Crimes, sitting in London, had since 1943 been receiving evidence from the various member nations. But its powers were vague; nor could it operate effectively until the nations which composed it were themselves certain of the principles and procedures they wished to put into effect. Moreover, it was handicapped by the fact that the Soviet Union was not represented in it, and was proceeding independently in regard to the entire question.

The gravest problems existed in regard to those criminals -- including the leading figures of the Nazi regime -- whose activities had been international in scope. Those whose crimes had been confined to a single nation were, under the terms of the Moscow Declaration, to be returned to that nation for trial. The principles and procedures applicable to them would, presumably, be matters for the decision of the

individual countries affected. But the treatment of those criminals whose activities were international in scope was a matter requiring detailed international agreement. And such agreement had not been reached.

We therefore undertook to analyze the problems with which it was necessary to deal, if an effective technique was to be devised for dealing with the major war criminals. We pointed out that it was necessary to define clearly what constituted war crimes, and urged in particular that Nazi atrocities before 1939 be included in that category, since they represented a part of the process of preparation for total war. We noted, too, the importance of arriving at a legal basis for the trials, and of deciding how to deal with pleas of immunity based on status as heads of state, or obedience to superior orders. And we urged that the major criminals should be tried by an international tribunal so scrupulously fair in its procedure that no objective persons would consider its judgments mere acts of vengeance.

II. The Jackson Report

A. Historical Background

By the beginning of May, the collapse of the German armies and the actual or imminent capture of the principal Nazi criminals made a decision on procedure imperative. The United Nations Commission for the Investigation of War Crimes therefore proposed to its member nations and Russia the establishment of an international court to deal with major war criminals. Meanwhile, the United States independently proposed to the United Kingdom, France, and the Soviet Union that the four powers

join in a protocol establishing an International Military Tribunal, defining its jurisdiction and powers, naming the categories of acts to be declared crimes, and describing those individuals and organizations to be placed on trial.

On May 2, President Truman also appointed Justice Robert H. Jackson of the United States Supreme Court as Chief of Counsel for the United States in the Prosecution of Axis War Criminals. Assigning to Justice Jackson the task not merely of assembling the United States case but of making preparations for the trial itself, the President declared:

> I hope and expect that an international military tribunal will soon be organized for this second category of criminals. It will be Justice Jackson's responsibility to represent the United States in preparing and prosecuting the case against the criminals before such military tribunal.... He and his staff will examine the evidence already gathered by the United Nations War Crimes Commission in London and by various Allied armies and other agencies. He will arrange for assembling the necessary additional evidence and he will begin preparations for the trial. It is our objective to establish as soon as possible an international military tribunal and to provide a trial procedure which will be expeditious in nature and which will permit no evasion or delay, but one which is in keeping with our tradition of fairness toward those accused of crime.

B. Scope of the Report

A month later, Justice Jackson presented to President Truman a *Report on Trials for War Criminals*. This report, made public by the President on June 7, became the basis of United States policy, and was in large part reflected in the eventual arrangements for the prosecution of war criminals.

Defining the scope of his recommendations Justice Jackson pointed out that his responsibility extended only to "the case of major criminals whose offenses have no particular geographical localization and who will be punished by joint decisions of the governments of the Allies," and did not include localized cases of any kind. Crimes against military law, he stated, would be dealt with on the spot by the Allied armies; while traitors and criminals who were returned to the scene of their crimes would be punished by the individual countries as they saw fit.

Justice Jackson reported that the American proposals for trial of major war criminals by an International Military Tribunal had been accepted without substantial alteration by the British, and in principle by the French. The Soviet Union, he stated, had not committed itself as yet, but it had been kept informed and there was no reason to doubt that it would unite in the prosecution.

C. The Need for Hearings

Meanwhile, he said:

> The American case is being prepared on the assumption that an inescapable responsibility rests on this country to conduct an inquiry, preferably in association with others, but alone if necessary, into the culpability of those whom there is probable cause to accuse of atrocities and of other crimes. We have many such men in our possession. What shall we do with them? We could, of course, set them at large without a hearing. But it has cost unmeasured thousands of American lives to beat and bind these men. To free them without a trial would mock the dead and make cynics of the living. On the other hand, we could execute or otherwise punish them without a hearing. But undiscriminating executions or punishments without definite findings

> of guilt fairly arrived at, would violate pledges repeatedly given, and would not set easily on the American conscience or be remembered by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing as dispassionate as the times and horrors we deal with will permit, and upon a record that will leave our reasons and motives clear.

D. Procedure of the Tribunal

Justice Jackson proposed that, while the hearings before the International Military Tribunal should be fair, they should not be

> regarded in the same light as a trial under our system, where defense is a matter of constitutional right....the procedure of these hearings may properly bar obstructive and dilatory tactics resorted to by defendants in our ordinary criminal trials.

E. Legal Basis of the Trials

The report called for the trial of

> a large number of individuals and officials who were in authority in the government, in the military establishment, including the General Staff, and in the financial, industrial and economic life of Germany who by all civilized standards are provable to be common criminals.

Further, Justice Jackson proposed

> to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then their neighbors.... Organizations such as the Gestapo and the SS were direct action units and were recruited from volunteers accepted only because of aptitude for, and fanatical devotion to, their violent purposes.
>
> In examining the accused organizations in the trial, it is our purpose to demonstrate their declared and covert objectives, methods of recruitment, structure, lines of responsibility,

> and methods of effectuating their programs. In these trials, important representative members will be allowed to defend their organizations as well as themselves.... If in the main trial an organization is found to be criminal, the second stage will be to identify and try before regular military tribunals individual members not already personally convicted in the principal case. Findings in the main trial that an organization is criminal in nature will be conclusive in any subsequent proceedings against individual members. The individual member will thereafter be allowed to plead only personal defenses or extenuating circumstances, such as that he joined under duress, and as to those defenses he should have the burden of proof.

Thus Justice Jackson proposed that the International Military Tribunal be given a dual function. As a judicial body, it would hear the cases of major individual defendants, whose activities transcended national boundaries. But in trying organizations, it would perform an essentially legislative function, since it would be establishing crimes of which minor military courts would thereafter have to take cognizance.

F. Heads of State and Superior Orders

Justice Jackson completely rejected what he termed "the obsolete thesis that a head of state is immune from legal liability." Declaring that this was a remnant of the doctrine of the divine right of kings, he added: "We do not accept the paradox that legal responsibility should be the least where power is the greatest."

He did not, however, entirely reject the defense of obedience to superior orders. But he did sharply limit its application. Thus, he wrote:

> If a conscripted or enlisted soldier is put on a firing squad, he should not be held responsible for the validity of the sentence he carries out. But the case may be greatly altered

> where one has discretion because of rank or the latitude of his orders. And of course the defense of superior orders cannot apply in the case of voluntary participation in a criminal or conspiratorial organization, such as the Gestapo or the SS. An accused should be allowed to show the facts about superior orders. The Tribunal can then determine whether they constitute a defense or merely extenuating circumstances, or perhaps carry no weight at all.

G. Definition of War Crimes

Justice Jackson urged that those things be regarded as war crimes "which fundamentally outraged the conscience of the American people and brought them finally to the conviction that their own liberty and civilization could not persist in the same world with the Nazi power," and which "were criminal by standards generally accepted in all civilized countries."

On this basis he recommended that the Nazi leaders be charged with three major categories of crimes:

> (a) Atrocities or offenses against persons or property constituting violations of International Law, including the laws, rules, and customs of land and naval warfare....such conduct as killing of the wounded, refusal of quarter, ill-treatment of prisoners of war, firing on undefended localities, poisoning of wells and streams, pillage and wanton destruction, and ill-treatment of inhabitants in occupied territory.
>
> (b) Atrocities and offenses, including atrocities and persecutions on racial and religious grounds, committed since 1933....
>
> (c) Invasions of other countries and initiation of wars of aggression in violation of International Law or treaties.

These three categories Justice Jackson included under what he termed "the Nazi master plan....a grand, concerted pattern to incite and

commit the aggressions and barbarities which have shocked the world."

The most controversial section of these proposals was, of course, that which branded aggressive warfare as a crime. Here Justice Jackson departed from the established doctrines of international law. In doing so, he asserted that the juridical status of war had been altered by a series of international acts and agreements, the most important of which was the Kellogg-Briand Pact.

III. The London Agreement and Charter

A. Preliminary Negotiations

After the publication of Justice Jackson's report, negotiations between the United States, Great Britain, France, and the Soviet Union continued. At the end of June representatives of the four powers met in London to arrange the constitution and terms of reference of the International Military Tribunal.

It was apparently not easy to reach an agreement. In particular, it appears that some were reluctant to include aggressive warfare among the crimes to be prosecuted. At the end of July, Justice Jackson reportedly threatened that if the conference did not reach a speedy decision, the United States would withdraw and conduct independently the prosecution of those major war criminals -- the majority -- who had been captured by the American Army.

The deadlock was finally broken when Justice Jackson presented his views to the Potsdam Conference. The result was that his position was, on the whole, accepted by the other three powers, and the London

Agreement and Charter were signed by the four powers on August 8. Subsequently they received the adherence of fifteen other nations.

B. Provisions

The London Agreement and Charter created an International Military Tribunal, consisting of one judge and one alternate from each of the four signatory powers. Each of the powers was also to name one of the four chief prosecutors.

In general, the Charter followed the lines of the proposals submitted by Justice Jackson in June. In Article VI of the Charter, three categories of acts were declared crimes of which the Tribunal was to take cognizance. These were:

(a) Crimes against peace. Under this heading were included wars of aggression and wars in violation of international treaties, agreements, or assurances, and participation in a common plan or conspiracy for the accomplishment of such acts.

(b) War crimes; i.e., violations of the laws or customs of war.

(c) "Crimes against humanity, namely, murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war; or persecution on political, racial or religious grounds in execution of, or in connection with, any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

The crimes committed in connection with the wholesale annihilation and spoliation of European Jewry fall primarily in the third category; some are also covered by the second. We may note that in this respect both Justice Jackson's report and the London Agreement and Charter follow

closely the recommendations which we made in *To the Counsellors of Peace.*

The Charter, applying the general principles of the law of conspiracy, declared that any leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy to commit any of the crimes enumerated in Article VI were responsible for all acts performed by any persons in execution of that plan.

Certain broad standards of fair trial were provided. These included furnishing the defendants, reasonably in advance of trial, with copies of the indictments and all documents connected therewith, in a language which they were able to understand; the right to conduct their own defense or to have the assistance of counsel of their own choice; and the right to present evidence and to cross-examine witnesses produced by the prosecution. On the whole, procedure was to follow the continental rather than the Anglo-American system. In particular, the Tribunal was authorized to admit any evidence "which it deems to have probative value." (In practice this has meant, for the most part, the admission of affidavits and the disregarding of the Anglo-American rule that only the best available evidence is acceptable - i.e., that where witnesses can be produced, other forms of evidence are not acceptable as a substitute.)

C. Justice Jackson's Statement on the Agreement

In announcing the agreement, Justice Jackson laid stress on the fact that for the first time in history concrete application was being given to the doctrine that aggressive war was illegal. He wrote:

> The definitions under which we will try the Germans are general definitions. They impose liability upon war-making statesmen of all countries alike. The actions of masses of men are

> the result of their thinking. If we can cultivate in the world the idea that aggressive war-making is the way to the prisoner's dock rather than the way to honors, we will have accomplished something toward making the peace more secure.

He emphasized also that this was the first instance in which four nations with vastly different legal systems had united in the conduct of co-operative judicial proceedings. Acknowledging the difficulties attendant on such joint action, he declared:

> It would not be a happy forecast for the future harmony of the world if I could not agree with such representatives of the world's leading systems of administering justice on a common procedure for trial of war criminals.
>
> Of course, one price of such international co-operation is mutual concession. Much to which American lawyers would be accustomed is missing in this instrument. I have not seen fit to insist that these prisoners have the benefit of all the protections which our legal and constitutional system throws around defendants.
>
> To the Russian and French jurist, our system seems unduly tender to defendants and to be loaded in favor of delay and in favor of the individual against the State. To us, their system seems summary and to load the procedure in favor of the State against the individual.
>
> However, the Continental system is the one the German themselves have employed and understood. It does not seem inappropriate that a special military commission for the trial of Europeans in Europe, for crimes committed in Europe, should follow largely though not entirely the European procedures. The essentials of a fair trial have been assured.

IV. Trial of the Major War Criminals

A. Constitution of the Court

The judges of the International Military Tribunal met in Berlin

on October 8 and constituted themselves as a court. The United States appointed former Attorney General Francis Biddle as Judge and Justice John Parker of the Circuit Court of Appeals as his alternate. Great Britain was represented by Lord Justice Lawrence as Judge and Justice Norman Birkett as alternate. The French and Russian Judges were, respectively, Professor Henri Donnedieu de Vabre and Major General I. J. Nikitchenko; their alternates Justice Robert Falco of the Court of Cassation and A. F. Volkhoff. Justice Lawrence was named as President of the Court. As Chief Prosecutors, Justice Jackson appeared for the United States, Attorney General Hartley Shawcross for Great Britain, R. A. Rudenko for the Soviet Union, and former Minister of Justice Francois de Menthon for France.

B. The Indictment

On October 18, the prosecution presented the Tribunal with a 35,000 word indictment against twenty-four top figures in the German government, the Nazi Party and affiliated organizations, the German Army and Navy, and German industry and finance. Seven organizations to which the individual defendants belonged and through which they operated were also named as defendants. The individuals named in the indictment were Reichsmarshal Hermann Goering; former Deputy Fuehrer Rudolf Hess; Robert Ley, head of the German Labor Front; General Wilhelm Keitel, Chief of the German High Command; Ernst Kaltenbrunner, SS police and Gestapo general; Dr. Alfred Rosenberg, "philosopher" of Nazism; Hans Frank, Governor General of Poland; Dr. Wilhelm Frick, Minister of the Interior and SS General; Julius Streicher, publisher of "Der Stuermer"; Dr. Walther Funk, Minister of Economics; Dr. Hjalmar Horace Greeley Schacht,

former President of the Reichsbank; the steel and munitions manufacturer, Gustav Krupp von Bohlen und Halbach; Grand Admiral Karl Doenitz, head of the German government at the time of the surrender; Grand Admiral Erich Raeder; Reich Youth Leader Baldur von Schirach; Fritz Sauckel, organizer of the system of slave labor by foreign workers; General Alfred Jodl, Chief of Hitler's General Staff; Deputy Fuehrer Martin Bormann; Dr. Albert Speer, head of the Todt Organization; Baron Konstantin von Neurath, former Foreign Minister and Protector of Bohemia-Moravia; and Hans Fritzsche, head of German radio propaganda.

In addition to the defendants the indictment named as groups and organizations to be declared criminal by reason of their aims and means employed for their accomplishment the Reich Cabinet, the Leadership Corps of the Nazi Party, the SS including the SD, the SA, the Gestapo, the General Staff and the High Command of the German Army.

C. The Charges

The indictment consists of four counts, of which count one, The Common Plan of Conspiracy, presents a comprehensive summary of the Nazi terror within Germany and the Nazi policy of deceit and aggression against neighboring countries in implementation of the Nazi doctrines of "master race" and "lebensraum," from the inception of the Nazi party to the attack on Pearl Harbor.

Count two deals with Crimes Against Peace; count three with War Crimes; and count four with Crimes Against Humanity. These three counts serve as a sort of bill of particulars, specifying the various crimes committed in the carrying out of the common plan or conspiracy. The indictment is followed by three appendices. Appendix (A) specifies the

individual responsibility of each defendant for crimes set out in each of the four counts; Appendix (B), the criminal character of each of the seven groups and organizations named in the indictment; Appendix (C) enumerates the violations of international treaties, agreements and assurances caused by the defendants in the course of planning, preparing and initiating the war. The indictment deals in large part with the crimes committed against Jews. Obviously one could hardly expect to find in such a document a full record of the whole criminal undertaking of the Nazi gang over a period of more than twelve years. However, the premeditated destruction of European Jewry, as a constituent element of the Nazi "Master Plan," runs throughout the whole document. It states that, conservatively estimated, five million seven hundred thousand Jews have been slaughtered by scientifically devised methods of mass annihilation; and that the Jews were singled out for extermination as a racial group and for no other guilt.

Count one charges that while:

> implementing their "master race" policy, the conspirators joined in a program of relentless persecution of the Jews, designed to exterminate them. Annihilation of the Jews became an official state policy, carried out both by official action and by incitements to mob and individual violence. The conspirators openly avowed their purpose.

Quoting from the anti-Jewish utterances of Alfred Rosenberg, Robert Ley and Julius Streicher, who proclaimed that the struggle would not be abandoned "until the last Jew in Europe has been exterminated and is actually dead," the indictment stresses that "these avowals and incitements were typical of the Nazi conspirators through the course of their conspiracy."

In one short sentence the indictment surveys the elimination, step by step, of European Jewry, leading toward final mass annihilation:

> The program of action against the Jews included disfranchisement, stigmatization, denial of civil rights, subjecting their persons and property to violence, deportation, enslavement, enforced labor, starvation, murder and mass extermination.

Itemizing the cruelties visited upon the civilian populations in the occupied Western and Eastern territories, count two (War Crimes) describes the methods used by the Nazi henchmen:

> The murders and ill-treatments were carried out by divers means including shooting, hanging, gassing, starvation, gross overcrowding, systematic under-nutrition, systematic imposition of labor tasks beyond the strength of those ordered to carry them out, inadequate provision of surgical and medical services, kickings, beatings, brutality and torture of all kinds, including the use of hot irons and pulling out of fingernails and the performance of experiments by means of operations and otherwise, on living human subjects....
>
> They conducted deliberate and systematic genocide, viz. the extermination of racial and national groups, against civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial or religious groups, particularly Jews, Poles and Gypsies and others.

The indictment states that about 1,500,000 persons were exterminated in Majdanek and about 4,000,000 in Auschwitz, 1,000,000 were killed and tortured in Rovno and the Rovno region and hundreds and thousands in other cities and localities of Poland, the Baltic countries, White Russia, the Ukraine and other countries. Although the victims are named only as "citizens of Poland, the USSR, the United States, Great Britain, Czechoslovakia, France and other countries" or "peaceful citizens,"

count four (Crimes Against Humanity) specifies expressly that millions of the victims mentioned as Poles, Russians, Americans and so forth were Jews.

Listing specific cases of extermination of Jews, and again only by way of example, the indictment charges the extermination of:

(1) Over 33,000 persons in the Lwow Ghetto from September 7, 1941 to July 6, 1943;

(2) 31,000 Jews in Kamenetz-Podolsk region including 13,000 persons brought there from Hungary;

(3) 6,300 Jews shot in an anti-tank ditch in Mineralnye Vody (Caucasus);

(4) 60,000 Jews shot on an Island on the Dvina River near Riga (Latvia);

(5) 20,000 Jews shot in Lutsk (Ukraine);

(6) 32,000 Jews in Sarny (Ukraine);

(7) 60,000 Jews shot in Kiev and Dniepropetrovsk (Ukraine);

(8) About 70,000 in Yugoslavia

The twenty-four top Nazi leaders were likewise charged with systematic plundering and looting, deportation of Jews for forced labor and destruction of their religious institutions.

Most of the defendants are charged, in Appendix (A), with the crimes set forth in counts one, three and four, under which are classified the atrocities committed against Jews. Express responsibility for anti-Jewish persecution is laid upon Julius Streicher, Baldur von Schirach and Hans Fritzsche.

D. The Nuremberg Trial

On November 20, the Trial opened in Nuremberg, once the shrine and citadel of Nazism. Only twenty-one of the defendants actually went on trial in person. Robert Ley committed suicide in his prison cell before the trial, leaving a political testament in which he declared that anti-Semitism had been a mistake, and called for the reconciliation of Jews and Germans, and their cooperation for the rebuilding of Germany and the welfare of the world. Martin Bormann was still unfound, and was placed on trial in absentia. Gustav Krupp was declared by Allied physicians to be suffering from senile dementia, and hence incapable of standing trial--which in any case he was unlikely to survive. An American motion to substitute his son Alfred as a defendant was accepted by the Russian and French prosecutors but opposed by the British, on the ground that it would mean delaying the opening of the trial for another month. The Tribunal therefore rejected it. And the case of Ernst Kaltenbrunner was severed from the others because he suffered a cerebral hemmorrhage on the eve of the trial.

In his opening speech, Justice Jackson declared:

> It is my purpose to show a plan and design to which all Nazis were fanatically committed, to annihilate all Jewish people....
>
> The persecution of the Jews was a continuous and deliberate policy. It was a policy directed against other nations as well as against the Jews themselves. Anti-Semitism was promoted to divide and embitter the democratic peoples and to soften their resistance to the Nazi aggression.... Anti-Semitism also has been aptly credited with being a "spearhead of terror." The ghetto was the laboratory for testing repressive measures. Jewish property was the first to be expropriated, but the custom grew and included similar measures against anti-Nazi Germans,

> Poles, Czechs, Frenchmen and Belgians. Extermination of the Jews enabled the Nazis to bring a practiced hand to similar measures against Poles, Serbs and Greeks. The plight of the Jews was a constant threat to opposition or discontent among other elements of Europe's population—pacifists, conservatives, Communists, Catholics, Protestants, Socialists. It was in fact a threat to every dissenting opinion and to every non-Nazi's life.... Nor was it directed against individual Jews for personal bad citizenship or unpopularity. The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline for conquered peoples. (emphasis ours).

Recording the magnitude of Jewish losses Justice Jackson exclaimed: "History does not record a crime ever perpetrated against as many victims or one carried out with such calculated cruelty!"

The task of showing particular crimes against Jews and the responsibility of the defendants for their commission has been divided between the Soviet Government Counsel, when committed in the East, and the Counsel for the French Republic, when perpetrated in the West. But what has already been disclosed and proven in the Nuremburg Court is sufficient to demonstrate that the duplicity, perfidy, cruelty and the prearranged plan of the defendants for mass slaughter of "inferior races" were an integral part of the Nazi mentality and the doctrine of *Lebensraum.*

V. Other Trials

Only the major war criminals, whose activities were international in scope, have been brought before the international Military Tribunal at Nuremberg. Meanwhile, however, many other war criminals have been tried by the courts of the various nations, and by the military courts of the Allied armies of occupation within Germany.

In France, Marshal Henri-Philippe Petain has been sentenced to life imprisonment. Pierre Laval has been convicted and executed. Thousands of lesser traitors and collaborationists have been sentenced to prison or to death, many of them specifically for their part in the persecution of the Jews during the Nazi occupation. Similarly, in Norway, Czechoslovakia, Belgium, Holland, Poland, Russia and the other countries of occupied Europe many thousands of traitors and other war criminals have been brought to justice. Thousands of others are still awaiting trial.

In Germany itself, British and American military courts have convicted and sentenced to execution or imprisonment many Nazis convicted of violations of the laws of war. They have also initiated proceedings against those involved in the administration of the concentration camps within their respective areas. The most spectacular of these trials was that of forty-five persons accused of crimes in connection with the administration of the Belsen camp. This trial was conducted by a British military commission. It resulted in the conviction of thirty-one of the defendants and death sentences for eleven. The American occupation authorities have similarly brought to trial a number of persons charged with the commission of atrocities at the Dachau concentration camp, near Munich in the American zone. Details of the punishment of war criminals in the Russian zone are not at present available. On the whole, however, this seems to have taken the form of administrative action, rather than public trial. (The Russians have, however, conducted a number of public trials within Russia of Nazis charged with violations of the laws of war.)

Undoubtedly further trials by the occupation authorities in the various zones, as well as by the governments of the liberated countries, may be expected. It is likely that some of these will be based on the decisions of the International Military Tribunal at Nuremberg, particularly as these decisions may involve the designation of membership in certain organizations as criminal per se.

VI. Conclusions and Proposals

The past year has seen the apprehension of thousands of major and minor war criminals. It has seen, too, the creation of international machinery for their trial and the formulation of principles in terms of which their guilt may be judged. What a year ago was still in the realm of theory and surrounded with uncertainty is today an accomplished fact. New techniques of international action have been devised; new ground has been broken in international law. On the whole, the procedures and principles adopted have been those suggested by us in *To the Counsellors of Peace.*

It seems unlikely that many of the major war criminals will escape punishment. Numerous individuals guilty of atrocities will, however, never be brought to justice. For the nature of war is such that a large part of the atrocities committed in its course can never be traced to their individual perpetrators. But if those responsible for the plan of which individual atrocities were merely the manifestations are brought to book, the interests of justice will, on the whole, have been served.

Nor has the problem of extradition, in general, proved a